

Freedom of Religion and the Rights of Schools

In its decision on a landmark case related to the right of students to wear turbans to school, the Federal Court of Malaysia applied two important principles: the right of schools to establish their own regulations and the wearing of a turban as an integral part of Islam (*Meor Atiquerahman Ishak & Ors. v. Fatimah bte Sihi & Ors.* 2006).

A school principal had expelled three students for wearing turbans to school based on regulations that prohibited students from doing so. (A turban is a piece of cloth that is wrapped around the head. It is also known as a *serban*.) At the High Court, the plaintiffs argued that the school principal had acted outside proper authority in establishing the policy on school uniforms, as the right was vested with the Ministry of Education, although the ministry's regulation on school uniforms was silent about turbans.

The plaintiffs alleged that the prohibition had violated their constitutional right to profess and practice their own religion. The High Court held that the expulsion order was null and void. It allowed the plaintiffs' application and ordered the students to be reinstated in school.

The Principle of Integrality

The school principal appealed the decision. The Court of Appeal examined the issue from two perspectives. First, it dealt with the question of whether a school has the discretion to establish a policy on school uniforms when the Ministry of Education is silent on the matter. Second, it held that the respondents bore the burden of proof to adduce sufficient and relevant evidence to prove that wearing a turban was mandatory in Islam.



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The Court of Appeal decided in favor of the appellant. It acknowledged that under the common law, schools have a legal obligation to maintain discipline and are entitled to establish their own regulations governing student uniforms. The respondents failed to prove that wearing a turban was mandatory under Islam. The court also held that wearing a turban did not form an integral part of the religion. Subsequently, the respondents appealed to the Federal Court.

Decision of the Federal Court

The Federal Court affirmed the decision of the Court of Appeal, declaring that the school regulation established by the principal was within his powers. Further, there is the general presumption that all educators are experienced in dealing with students. Thus, they should be accorded respect and recognition when they establish regulations for the students' benefit. The school regulation that prohibits wearing turbans was not unconstitutional as it did not contravene the provisions of the federal constitution.

On the other hand, the court expressed that other factors needed to be considered when determining whether a law was constitutional or otherwise. The question of whether a practice is or is not an integral part of a religion represents only one factor. Federal Court Judge Abdul Hamid Mohamad expressed this as follows: "... The court should then consider the importance of the practice in relation to the religion. This is where the question whether the practice is an integral part of the religion or not becomes relevant.

If the practice is of a compulsory nature or 'an integral part' of the religion, the court should give more weight to it. If it is not, the court, again depending on the degree of its importance, may give a lesser weight to it." Under the circumstances, wearing a turban does not constitute an integral part of the religion.

Conclusion

School rules and regulations are prerequisites to maintaining student discipline. They foster a safe and conducive learning environment and protect the interests of both students and teachers. Principals who are vested with the authority to enforce these rules and regulations must do so in a fair and reasonable manner to minimize the threat of litigation. The attempt to seek a balance between protecting the constitutional rights of students while maintaining the rights and interests of the school is indeed a delicate task. ■

References and Resources

- Fatimah bte Sihi & Ors. v. Meor Atiquerahman bin Ishak & Ors.*, 2 MLJ 25 (2005).
- Meor Atiquerahman bin Ishak & Ors. v. Fatimah bte Sihi & Ors.*, 5 MLJ 375 (2000).
- Meor Atiquerahman bin Ishak & Ors. v. Fatimah bte Sihi dan lain-lain*, 4 CLJ 1 (2006).

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